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No. 07-1216

In The
Supreme Court of the United States

PHILIP MORRIS USA INC.,

Petitioner,

v.

MAYOLA WILLIAMS,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Oregon

BRIEF OF AMICI CURIAE FEDERAL PROCEDURE SCHOLARS IN SUPPORT OF RESPONDENT

ERWIN CHEMERINSKY
Counsel of Record
UNIVERSITY OF CALIFORNIA, IRVINE
SCHOOL OF LAW
4500 Berkeley Place
Irvine, CA 92697-8000
(949) 824-0066

Counsel for Amici Curiae

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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INTEREST OF AMICI CURIAE[1]

Amici curiae are law professors and scholars at prominent universities in the United States. Each of the amici has expertise in federal and state procedure and in the concept of federalism that honors the respective roles of state courts and federal courts in providing access to justice for litigants in this country. The Federal Procedure Scholars file this brief to counter the assertion that routine state procedural requirements may be bypassed or ignored to address an alleged constitutional violation that was never properly presented to the trial court. Short biographies of each amicus are provided in Appendix A.

SUMMARY OF ARGUMENT

Although Philip Morris portrays the decision below as the product of a rebellious state supreme court refusing to obey a clear directive of this Court, an unbiased and dispassionate review of the decisions in question and of basic principles of state and federal procedure reveals otherwise. In reaffirming the trial

[1] The parties have consented to the filing of this brief. Counsel of record for all parties received notice at least ten days prior to the due date of the amici curiae's intention to file this brief. In addition to amici and their counsel, this brief was prepared with the assistance and financial support of Brent Rosenthal and the law firm of Baron & Budd, P.C., Dallas, Texas. No other person or entity made a monetary contribution to the preparation or submission of this brief.

court's award of punitive damages, the Oregon Supreme Court held that Philip Morris did not properly request the constitutional protection (in the form of a jury instruction) contemplated by this Court in its opinion because the proposed instruction was commingled with several erroneous propositions of law. Philip Morris condemns the Oregon Supreme Court's application of the rule requiring that a proposed instruction be correct in all respects as unconventional and hyper-technical, but a survey of state law indicates that at least eighteen states in addition to Oregon apply the same rule in the same way. And although Philip Morris insists that the rule as applied by the Oregon Supreme Court in this case serves no legitimate state interest, this Court and others have explicitly recognized that procedural default rules such as the one applied in this case promote the important state interests of requiring parties to raise issues promptly and coherently, of minimizing the need for trial judges to parse incorrect or contradictory proposals, and of protecting the finality of judgments.

No federal or state rule or practice prohibited the Oregon Supreme Court from considering state grounds for affirmance after remand from this Court, particularly as this Court's decision recognized a right to some form of constitutional protection only "upon request." *Philip Morris USA v. Williams*, 127 S. Ct. 1057, 1065 (2007). The Oregon Supreme Court properly decided the open question of whether Philip Morris made a proper request for the protection.

Although, in hindsight, the more efficient course would have been to decide the sufficiency of the request first, the Oregon Supreme Court's approach was not unique. In several recent cases, a state supreme court, after reversal by this Court on federal grounds, reinstated its prior decision based on its application of independent state law, and this Court has respected those decisions. In the interests of federalism and comity, it should respect the decision below as well.

ARGUMENT

I. The Independent State-Law Ground for Affirmance Stated by the Oregon Supreme Court Is Well-Established and Not Novel or Pretextual.

A. The Rule That a Trial Court Does Not Err in Refusing To Give a Jury Instruction That Commingles Valid and Erroneous Propositions of Law Is "Firmly Established" and "Regularly Followed," Both in Oregon and in Many Other Jurisdictions.

In declining to disturb the trial court's judgment based on its refusal to give the instruction on punitive damages proposed by Philip Morris, the Oregon Supreme Court applied the "well-understood" rule that an appellate court will not find error in the refusal to give a proposed instruction unless it was "clear and correct in all respects, both in form and

substance, and . . . altogether free from error." *Williams v. Philip Morris, Inc.*, 176 P.3d 1255, 1261 (Or. 2008) (quoting *Beglau v. Albertus*, 536 P.2d 1251, 1256 (Or. 1975). In its brief, Philip Morris disparages the court's application of the rule as "nothing more than a pretext for refusal to protect Philip Morris's due process rights." Br. Pet'r 2. But as Williams demonstrates thoroughly in her brief in response, the rule is deeply rooted in Oregon jurisprudence. *See* Br. Resp't 25-31. The Oregon appellate courts have applied the rule consistently since 1916, and have clearly explained to the bench and bar the need to present trial courts with error-free proposals in order to assert error on appeal should they be denied. *See e.g.*, *Sorenson v. Kribs*, 161 P. 405, 409-10 (Or. 1916); *Owings v. Rose*, 497 P.2d 1183, 1188 (Or. 1972); *Hernandez v. Barbo Machinery Co.*, 957 P.2d 147, 151 (Or. 1998).[2]

[2] For the reasons explained in Williams' brief, *State v. George*, 97 P.3d 656 (Or. 2004) does not represent a departure from this rule. *See* Br. Resp't 31-33. In *George*, a criminal defendant successfully challenged the failure of the trial court to instruct the jury of the consequences of an insanity verdict in accordance with an Oregon statute despite the defendant's failure to request a proper instruction at trial. The supreme court explained that although Oregon law ordinarily requires a party complaining of the refusal to give an instruction to have made a proper request, the statute in question "unequivocally places the responsibility for giving the required instruction on the trial court, without regard to whether the defendant wants or requests such an instruction, much less offers one that is a correct statement of the law." 97 P.3d at 661-62. Of course, no such statute is involved in this case.

The principle applied by the Oregon Supreme Court in this case is not some local anomaly. One leading treatise notes that generally, it is "proper to refuse a series of instructions or propositions asked in gross, some of which are correct and others incorrect." 89 C.J.S. Trial § 716 (West 2001), at 344. The editors add that although the rule has been modified in some jurisdictions, "[a] general exception to a refusal to give several instructions requested collectively is usually insufficient if any of the instructions are erroneous. . . ." 89 C.J.S. Trial § 734 (West 2001), at 365 (footnotes omitted).

As the chart appended to this brief indicates, at least eighteen other jurisdictions have expressly adopted and applied the rule, often in terms virtually identical to those used to explain the rule in Oregon.[3] Some courts rely on agricultural metaphors to describe the concept, referring to the need to separate "wheat from chaff"[4] or "sheep from goats;"[5] others speak simply of the duty of counsel to separate the good from the "bad"[6] in their proposed instructions. Whatever the terminology, the rationale for the rule is fundamental and consistent: a party will not be

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[3] *See* Appendix B to this brief, entitled "Jurisdictions That Have Applied the 'Correct in All Respects' Rule."

[4] *See, e.g.*, *Commonwealth v. Kloiber*, 106 A.2d 820, 825 (Pa. 1954).

[5] *See, e.g., Public Service Co. of Oklahoma v. Bleak*, 656 P.2d 600, 608 (Ariz. 1982).

[6] *Forester v. State,* 272 S.W.2d 320, 322 (Ark. 1954).

heard to complain of error in a jury instruction if it did not furnish the trial court with an accurate and practical substitute.

As the Oregon Supreme Court found and as Williams demonstrates in her brief, the compound instruction on punitive damages proposed by Philip Morris is infected with multiple, substantial errors justifying its refusal by the trial court. *See Williams v. Philip Morris, Inc.*, 176 P.3d 1255, 1261-64 (Or. 2008); Br. Resp't 20-25. The Oregon Supreme Court properly applied Oregon law in holding that the trial court did not err in refusing to give Philip Morris's defective punitive damages instruction.

B. The Rule Barring Complaint on Appeal of the Denial of a Requested Instruction That Is Not Correct in All Respects Serves a Legitimate State Interest.

This Court recently emphasized the importance of state procedural default rules in *Sanchez-Llamas v. Oregon*, 548 U.S. 331 (2006). In that case, a Honduran national was charged, tried, and convicted of a crime without being advised that under the Vienna Convention on Consular Relations, he had a right to request that his consulate be notified of his detention. He did not assert the alleged violation of the treaty until he initiated habeas corpus proceedings after his conviction was affirmed. The Court refused to overlook "the importance of procedural default rules in an adversary system, which relies chiefly on the *parties*

to raise significant issues and present them to the courts in the appropriate manner at the appropriate time for adjudication." 548 U.S. at 356 (emphasis in original). Specifically, the Court noted that procedural default rules "are designed to encourage parties to raise their claims promptly and to vindicate 'the law's important interest in the finality of judgments,'" *id*. (quoting *Massaro v. United States*, 538 U.S. 500, 504 (2003), and stressed that such rules apply "even to claimed violations of our Constitution." *Id*. at 334.

The widespread application of the requirement that a party cannot complain on appeal of the refusal to give a valid instruction joined with erroneous instructions itself suggests the wisdom and legitimacy of the rule. One obvious purpose of the rule is to minimize the burden on the trial judge and to reduce the risk of confusion. As one federal court has noted, the responsibility to request an instruction free from legal error is not a formality: the trial court, especially in hearing objections after the instructions have been given, "is making on-the-spot choices; and when the instruction offered by the lawyer is manifestly overbroad, the district judge may reject without assuming the burden of editing it down to save some small portion that may be viable." *Parker v. City of Nashua*, 76 F.3d 9, 12 (1st Cir. 1996). Trial courts should not be "required to rewrite an improper instruction to capture a kernel that may have some validity; it is counsel's job to present an unimpeachable instruction." *McCann v. Wal-Mart Stores, Inc.*, 210 F.3d 51, 55 (1st Cir. 2000).

Moreover, the rule provides an effective disincentive for parties to bundle valid and questionable propositions in the hope that the trial court will give the group of instructions en masse. Contrary to Philip Morris's apparent assumption, the circumstances of this very case demonstrate the benefits of the rule requiring that proposed instructions be "correct in all respects" – and the expense and injustice of a refusal to apply the rule. Here, Philip Morris combined the proposed instruction about harm to other parties with other instructions about factors to consider in calculating punitive damages and then objected only to the court's refusal to give the entire package. In so doing, Philip Morris denied the trial court a realistic opportunity to consider whether a discrete, stand-alone instruction concerning harm to other parties was warranted. As Williams points out in her brief, the trial judge clearly believed that Philip Morris's concern about punishment for harm to others had been addressed to Philip Morris's satisfaction by other instructions. Br. Resp't 14-16. Thus, Philip Morris's general objection to the refusal to give its Request No. 34 did not apprise the trial court of the particular deficiency of which Philip Morris now complains.

This Court recently reiterated the self-evident proposition that "[a] State's highest court is unquestionably the ultimate exposito[r] of state law." *Riley v. Kennedy*, 128 S. Ct. 1970, 1985 (2008) (quoting *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975). It is true, as Philip Morris emphasizes and as this Court has observed, that "[o]n rare occasions the Court has

re-examined a state-court interpretation of state law when it appears to be an "obvious subterfuge to evade consideration of a federal issue." *Mullaney v. Wilbur*, 421 U.S. 684, 691 n. 11 (1975) (quoting *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 129 (1945)). But this is not such an occasion. *Cf. Bush v. Gore*, 531 U.S. 98, 141 (2000) (Ginsburg, J., dissenting) (this case "involves nothing close to the kind of recalcitrance by a state high court that warrants extraordinary action by this Court. . . . The court surely should not be bracketed with state high courts of the Jim Crow South.").

The rule applied by the Oregon Supreme Court is deeply rooted in Oregon law and practice, is not an idiosyncratic rule but one that is applied in many jurisdictions, and serves obvious and legitimate state interests. This Court should not interfere with the Oregon Supreme Court's proper and straightforward application of its own procedural rules.

II. No Federal or State Rule or Practice Prohibited the Oregon Supreme Court from Considering the State-Law Basis for Affirmance After the Most Recent Remand by This Court.

Had the Oregon Supreme Court applied its rule that the refusal to give a legally incorrect instruction is not error the first time it considered this case, its disposition would have been relatively inconspicuous. Every day, state courts affirm judgments over constitutional objections that have not been preserved

under valid and unremarkable state procedural rules. What is unusual about this case is the timing of the Oregon court's decision; it considered Williams' state-law ground for affirmance only after this Court granted certiorari and held that a defendant, "upon request," is entitled to "*some* form of protection" from having punitive damages imposed as punishment for harming persons other than the plaintiff. *Philip Morris USA v. Williams*, 127 S. Ct. 1057, 1065 (2007) (emphasis in original).

It is indeed unfortunate that the Oregon Supreme Court did not reach Williams' state-law basis for affirmance until after this Court considered the constitutional issue, and that this Court granted certiorari despite Williams' insistence that the state procedural rule should prevent the Court from reaching the constitutional question. As Justice Ginsburg has noted, although an opinion like the one previously issued by the Court in this case "may not be technically 'advisory,'" the affirmance by the Oregon Supreme Court of the judgment in this case on a state-law ground "suggest[s] that the Court unnecessarily spent its resources on [a case] better left, at the time in question, to state-court solution." *Arizona v. Evans*, 514 U.S. 1, 33 (1995) (Ginsburg, J., dissenting).

The procedural posture of the case, however, is hardly Williams' fault; as Williams points out and Philip Morris concedes, Williams urged her state-law ground for affirmance every step of the way. Moreover, as Williams explains in her brief, the larger procedural context of this case – with its serial trips

to the Oregon Supreme Court and this Court – explains, at least in part, why the courts (other than the Oregon Court of Appeals) did not address the state-law ground.

While unfortunate, the courts' haste to reach the constitutional issue provides no good reason to deny Williams the rights conferred on her by state law and to protect Philip Morris from the fair consequences of its trial strategy. Commentators have pointed out that while unusual, the procedural journey of this case is hardly unheard-of; "[i]n a considerable number of cases in which the Court has granted certiorari because a plain statement [of the state law basis of decision] was lacking . . . the state courts have ended up re-deciding the cases on remand and reaching opposite results from those arrived at by their federal counterparts." Ken Gormley, *The Silver Anniversary of New Judicial Federalism*, 66 Alb. L. Rev. 797, 805 (2003); *see also* Richard W. Westling, Comment, *Advisory Opinions and the "Constitutionally Required" Adequate and Independent State Grounds Doctrine*, 63 Tul. L. Rev. 379, 389 n. 47 (1988) (noting that in the period between July 1, 1983 and January 1, 1988, in 26 percent of the cases in which the Court decided cases in which adequate and independent state grounds were raised, the state court on remand reinstated its prior decision based on the state grounds).

Racing Ass'n of Central Iowa v. Fitzgerald, 675 N.W.2d 1 (Iowa), *cert. denied*, 541 U.S. 1086 (2004) provides a recent example. In that case, the Iowa

Supreme Court held that a statute taxing gambling receipts generated at racetracks at a rate nearly twice the rate imposed on gambling receipts generated on riverboats violated the racetracks' constitutional right to equal protection. *Racing Ass'n v. Fitzgerald*, 648 N.W.2d 555, 562 (Iowa 2002). This Court reversed, holding that the statute did not violate the federal due process clause. *Fitzgerald v. Racing Ass'n*, 539 U.S. 103 (2003). On remand, the Iowa Supreme Court reinstated its earlier decision, holding specifically that the statute violated the equal protection clause of the Iowa Constitution. *Racing Ass'n of Central Iowa v. Fitzgerald*, 675 N.W.2d 1, 3 (Iowa 2004). Justice Cady dissented, pointing out that "[w]e did not state in *RACI* that our opinion was based on 'adequate and independent state grounds' nor did we even indicate that might be the case." 675 N.W.2d at 27 (Cady, J., dissenting). He added that by adhering to its prior opinion, "the majority is taking a second bite at an apple that has long since dropped and rolled away from our tree," *id*., and found the decision "offensive to the Supreme Court, its important role in the judicial system, and the principles of federalism on which our entire system operates." *Id.* at 28. Notwithstanding Justice Cady's strongly-expressed observations, this Court denied certiorari.

Other state high courts have validly applied state law after remand to avoid a constitutional question that this Court had anticipated. In *Pennsylvania v. Labron*, 518 U.S. 398 (1996), this Court overturned a decision of the Pennsylvania Supreme Court that

suppressed a warrantless search of an automobile, holding that the federal constitution did not require that result. On remand, the Pennsylvania Supreme Court restored its prior ruling, asserting that it was a proper application of the state constitution notwithstanding this Court's decision. *Commonwealth v. Labron*, 690 A.2d 228 (Pa. 1997). In *New York v. Class*, 475 U.S. 106 (1986) the New York Court of Appeals suppressed the results of a warrantless search, but this Court reversed, expressly rejecting the state's contention that the New York court's decision rested on an adequate and independent state ground. 475 U.S. at 109-10 (1986). On remand, however, the New York court reinstated its prior decision, holding that despite this Court's finding to the contrary, its ruling was based on the New York Constitution. *People v. Class*, 494 N.E.2d 444, 445 (N.Y. 1986).

"Procedural default rules are designed to encourage parties to raise their claims promptly and to vindicate 'the law's important interest in the finality of judgments.'" *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 356 (2006) (quoting *Massaro v. United States*, 538 U.S. 500, 504 (2003)). Even at this late date in this litigation, it is not too late for the Oregon Supreme Court, or for this Court, to vindicate that interest. Oregon's rule authorizing its trial courts to reject proposed jury instructions that are not entirely free from error is a common one, and the Oregon Supreme Court's conclusion in response to this Court's remand that Philip Morris did not properly request the constitutional protection it sought on

appeal was neither wrong nor untimely. This Court should respect the proper application of Oregon law by the Oregon Supreme Court.

CONCLUSION

The Court should dismiss the writ of certiorari as improvidently granted or, in the alternative, affirm the judgment of the Oregon Supreme Court.

Respectfully submitted,

ERWIN CHEMERINSKY
Counsel of Record
UNIVERSITY OF CALIFORNIA, IRVINE
SCHOOL OF LAW
4500 Berkeley Place
Irvine, CA 92697-8000
(949) 824-0066

Counsel for Amici Curiae

APPENDIX A
LIST OF AMICI CURIAE
FEDERAL PROCEDURE SCHOLARS

Anne Bloom is Associate Professor of Law at the McGeorge School of Law at the University of the Pacific. She teaches Torts, Legislation, and Complex Litigation, and her research interests include mass torts and the motivation and culture of the plaintiff's bar.

Erwin Chemerinsky is Dean and Distinguished Professor of Law at the University of California, Irvine School of Law. He is the author of six books on federal practice and constitutional law. His most recent book is entitled *Empowering Government: Federalism for the 21st Century*, published by Stanford University Press in 2008.

Christopher M. Fairman is Professor of Law at the Michael E. Moritz College of Law at The Ohio State University. He teaches Civil Procedure and Alternative Dispute Resolution, and his areas of expertise include legal ethics and collaborative law. He has published numerous articles on federal and state court procedure and legal ethics.

Lonny S. Hoffman is the George Butler Research Professor of Law at the University of Houston Law Center. His primary area of teaching and the scholarly focus of his research and writing is the law of federal courts and civil procedural law in the state and federal courts. Professor Hoffman's published

work examines federalism issues and on the relationship between judicial and legislative authority as it impacts the adjudication of private rights.

Arthur Miller is University Professor at New York University School of Law. Previously, Professor Miller was Bruce Bromley Professor of Law at Harvard Law School, where he taught for thirty-six years. He is co-author with the late Charles Alan Wright of *Federal Practice and Procedure*, considered the leading treatise on the subject of civil and criminal procedure in the federal courts.

Elizabeth G. Thornburg is Professor of Law at Southern Methodist University Dedman School of Law. She teaches Civil Procedure, Conflict of Laws, Complex Litigation, Texas Procedure, Remedies, and an advanced procedure seminar. Drawing on her experience with civil rights and commercial litigation, her scholarship focuses on the procedural fairness of the litigation process, especially at the pleadings, discovery, and jury charge stages. She also writes and speaks in the areas of comparative procedure, online dispute resolution, and the intersection of law and culture.

Michael E. Solimine is the Donald P. Klekamp Professor of Law at the University of Cincinnati College of Law. He teaches courses in civil procedure, federal courts, and conflict of laws, and has published numerous books and law review articles on the same topics. Professor Solimine's scholarship focuses on the doctrinal, policy, and empirical implications of the

litigation of federal constitutional and statutory issues in federal and state courts. He is also the co-author of books on civil procedure in the state courts of Ohio, and has served as Counsel (i.e., reporter) to the Civil Rules Subcommittee to the Rules Advisory Committee of the Ohio Supreme Court.

Georgene M. Vairo is Professor of Law and William M. Rains Fellow at Loyola Law School in Los Angeles, California. Professor Vairo is an authority on federal court jurisdiction and procedure, and complex litigation. She has written numerous articles on mass tort litigation, federal practice, and jurisdiction, and has written and edited several books, including *Rule 11 Sanctions; Civil Practice and Litigation in Federal and State Courts; Federal Civil Practice in New York Federal Courts;* and *Understanding Federal Courts,* with Professor Martin Redish of Northwestern Law School and Professor Linda Mullenix of the University of Texas School of Law.

Stephen I. Vladeck is Associate Professor of Law at American University Washington College of Law. His teaching and research interests include federal courts, national security law, constitutional law, and criminal law. He has authored many articles on federal practice in the detention of suspected terrorists and on the use of habeas corpus to vindicate federal constitutional rights.

APPENDIX B

JURISDICTIONS THAT HAVE APPLIED THE "CORRECT IN ALL RESPECTS" RULE

Arizona

Public Service Co. of Oklahoma v. Bleak, 656 P.2d 600, 608 (Ariz. 1982) ("If a requested instruction is partly correct and partly incorrect, it is not the duty of the trial court to 'separate the sheep from the goats' and the entire instruction may be properly refused.")

Arkansas

Forester v. State, 272 S.W.2d 320, 322 (Ark. 1954) ("It is well settled that a general exception to the refusal to give several instructions requested collectively will not be considered on appeal, if any of them are bad.")

California

Shaw v. Pacific Greyhound Lines, 323 P.2d 391, 394 (Cal. 1958) ("A trial judge is not required to correct a requested instruction which is incomplete or erroneous."); *see also Hazelwood v. Gordon*, 61 Cal. Rptr. 115, 118 (Cal. Ct. App. 1967) ("[A] court is not bound to separate the applicable portion of an instruction from the inapplicable, nor obligated to modify a requested instruction.")

Colorado

Portland Gold Mining Co. v. O'Hara, 101 P. 773, 775 (Colo. 1909) ("The exception taken, being general to all the instructions offered by defendant en masse, will not be considered by this court upon review.")

Florida

Britt v. State, 102 So. 761, 763 (Fla. 1924) ("It has been the rule of appellate procedure in this state since the existence of this court, that when one exception is taken to the entire charge of the court the exception fails if the charge contains a single correct proposition of law. The rule applies with equal reason to an exception taken to the court's refusal to give several instructions.")

Georgia

Barrett v. Barrett, 170 S.E. 70, 74 (Ga. 1933) (trial court did not err in the "refusal of the requests for instruction to the jury presented en bloc, some of which were at variance with the law of the case. . . . "); *see also Department of Transp. v. Patten Seed Co.*, 660 S.E.2d 30, 34 (Ga. Ct. App. 2008) ("[i]f *any portion* of a requested charge is inapt, incorrect, misleading, confusing, argumentative, not precisely adjusted or tailored, or not reasonably raised or authorized by the evidence, denial of the requested charge is proper.") (citations omitted; emphasis in original)

Indiana

Foster v. United Home Improvement Co., 428 N.E.2d 1351, 1359 (Ind. Ct. App. 1981) (instruction properly refused because it was "misleading for a variety of other reasons" than those relied on by appellant)

Louisiana

Barrois v. Service Drayage Co., 250 So.2d 135, 146 (La. Ct. App. 1971) ("If a requested instruction is erroneous, faulty, or defective, it is properly refused, whether it is erroneous in whole or in part. It is likewise proper to refuse a series of instructions or propositions asked in gross, some of which are correct and others incorrect.")

Michigan

Williams v. City of Lansing, 115 N.W. 961, 963 (Mich. 1908) ("This latter part of the request was, as stated in the former part of our opinion, erroneous, and therefore the trial court could not give the request under consideration.")

Missouri

Chouteau v. Missouri-Lincoln Trust Co., 276 S.W. 49, 54 (Mo. 1925) ("There are certain paragraphs which, if they had been offered as single instructions, should have been given, but we cannot assume they were so offered; nor can we convict the trial court of error in not separating the good from the bad."); *see also*

Samuels v. Illinois Fire Ins. Co., 354 S.W.2d 352, 361 (Mo. Ct. App. 1961) ("It is not error to deny a request for an instruction unless it is correct in all respects.")

Montana

Dorall v. Davis, 360 P.2d 409 (Mont. 1961) ("A requested instruction, erroneous in part, is properly excluded, and this is true even though part of the instruction may have been proper.") (citation omitted)

Nebraska

In re Johnson's Estate, 16 N.W.2d 504, 515 (Neb. 1944) ("Where one of several instructions asked by a party fails to correctly state the law, error cannot be predicated upon an exception taken to the refusal of the court to give the instructions as a whole.") (internal quotation marks and citation omitted)

New Jersey

Willcox v. Christian & Missionary Alliance, 12 A.2d 709 (N.J. Ct. App. 1940) ("[I]n our jurisdiction a request to charge containing several propositions is weighed not by its strength but by its weakness since, if unsound in any particular, it may be rejected in its entirety.")

North Dakota

Wrangham v. Tebelius, 231 N.W.2d 753, 757 (N.D. 1975) ("The trial court is not bound to revise and restate instructions that are not presented in proper form and which mingle correct statements of the law with those that are incorrect and ambiguous.")

Ohio

McKay v. Ohio Fuel Gas Co., 51 N.E.2d 909 (Ohio Ct. App. 1942) ("There is a presumption that several special requests for instructions, when not offered as several and independent propositions of law, are offered as a series, and if one of them fails to state a correct proposition of law applicable to the facts of the case, it is not error for the Court to refuse all of them.") (internal quotation marks and citation omitted)

Pennsylvania

Commonwealth v. Kloiber, 106 A.2d 820, 825 (Pa. 1954) ("Where a point for charge contains good law and bad law a Court is not bound to remold the point and separating the good from the bad, the wheat from the chaff, affirm that portion of the point which is an accurate statement of the law.")

South Carolina

Edens v. Cole, 261 S.C. 556, 201 S.E.2d 382, 387 (S.C. 1973) "Each request to charge is a unit and a trial

judge is not called upon to separate a request to charge into parts, charging such as are sound and rejecting such as are unsound.") (citation omitted); *see also Bradley v. Keller*, 156 S.E.2d 638, 640 (S.C. 1967) ("There is no duty on the part of the trial judge to dissect a request to charge, which contains error, in order to extract therefrom any unobjectionable part and grant it.")

Washington

Crossen v. Skagit County, 669 P.2d 1244, 1248 (Wash. 1983) ("The clear rule is that a trial court need never give a requested instruction that is erroneous in any respect.") (internal quotation marks and citation omitted)